



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

## DOCUMENT FOR PUBLIC RELEASE

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**Matter of:** Orlando Business Telephone Systems, Inc.

**File:** B-275053.5; B-275053.6; B-275053.7; B-275053.8

**Date:** February 21, 1997

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Laura K. Kennedy, Esq., and Kelley P. Doran, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for NEC Business Communications Systems, Inc., an intervenor.  
Jane Converse, Esq., Department of Veterans Affairs, for the agency.  
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Protest against agency's post-protest reevaluation of past performance using new past performance reference for contract not listed in protester's proposal is denied where solicitation contemplated that agency would consider offerors' performance on other agency contracts for similar services whether or not offerors complied with solicitation requirement to list such contracts in proposals; fact that agency implemented stated intention only after protests had been filed is neither evidence of bias nor otherwise improper.
2. Protest against source selection based on agency's correction of offerors' summations of line item prices is denied where agency, anticipating that discrepancies were likely where offerors were required to complete 56 pages of detailed pricing schedules with hundreds of prices, advised offerors in solicitation that the agency would independently generate summary pricing tables and that only the unit prices, and not offerors' summations of their prices, would control.

## DECISION

Orlando Business Telephone Systems, Inc. (OBT) protests the Department of Veterans Affairs' (VA) decision to terminate its contract and make award to NEC Business Communications Systems, Inc. under request for proposals (RFP) No. 101-21-96, for replacement of the telephone system at the VA Medical Center, San Juan, Puerto Rico. VA determined that its award to OBT resulted from an erroneous evaluation of offerors' past performance and that, based on a proper evaluation, NEC is in line for award.

We deny the protest.

## BACKGROUND

The solicitation contemplated award of a fixed-price contract for the purchase, installation and maintenance (for up to 10 years) of a complete digital and voice telephone system. Award was to be made to the offeror whose technically acceptable proposal offered the "most advantageous alternative to the Government" under two approximately equal evaluation criteria: (1) past performance, and (2) cost/price. Offerors were to furnish "[a] list of all contracts and subcontracts completed within the last three years and all contracts and subcontracts currently in progress. Contracts listed shall include those entered into by the Federal Government. . . ." Offerors also were instructed that "[a]ll proposals shall provide examples of offerors' past performance and experience, as a PRIME CONTRACTOR, in successfully providing, installing and maintaining service comparable to those described in this document. A representative list of the PRIME CONTRACTOR's installed systems (within the continental United States) shall be submitted. . . ." However, the solicitation cautioned that the information to be utilized in the evaluation of past performance would be obtained not only from the references listed in the proposal, but also from "other customers known to the Government, including any VA contracts, consumer protection organizations, and others who may have useful and relevant information." With respect to cost/price, the RFP required offerors to complete on electronic media 56 pages of detailed pricing tables, providing "sufficient information on the price schedules so that the Government can determine the non-recurring and recurring charge of each and every item for service and equipment at any time during the contract life."

Five proposals were received by the closing times on August 29, 1996 (for past performance proposals) and September 13 (for technical and price proposals). Four of the proposals, including NEC's and OBT's, were found technically acceptable. Although OBT's evaluated price (\$4,825,511) as initially calculated was slightly higher (\$26,580) than NEC's (\$4,798,931), OBT's proposal received a higher past performance rating (excellent) than NEC's (Good ++), and VA found OBT's proposal overall to be most advantageous.<sup>1</sup> (Based upon its reexamination of offerors' pricing schedules, VA now reports that OBT's evaluated price (\$4,822,231) is \$96,117 higher than NEC's (\$4,726,114).) After learning of the resulting award (without discussions) to OBT, NEC and another offeror filed protests with our Office challenging the selection decision.

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<sup>1</sup>Although OBT's summation of its line item prices (\$4,746,282) was less than NEC's (\$4,898,548), when VA applied solicitation provisions (discussed below) providing for an independent recalculation of prices based on proposed unit prices, the agency determined that NEC in fact had proposed the lowest overall price.

Upon reviewing the past performance evaluations in the course of responding to the protests, the agency discovered that it had miscalculated the numerical scores upon which the performance ratings were based. Instead of NEC's proposal being entitled to three excellents and two goods in the five past performance subcategories, for an overall rating of good++, the agency determined that it was entitled to four excellents and a good, for an overall rating of excellent. Likewise, OBT's proposal was found entitled to five excellents (instead of four excellents and one good), for a continued overall rating of excellent. Finding the proposals to be essentially equal with respect to past performance, VA concluded that it could no longer justify the evaluated price premium, however small, associated with OBT's proposal, and proposed to make award to NEC. OBT protests this proposed award.

## PAST PERFORMANCE

OBT generally asserts that VA improperly inflated NEC's past performance score, "attributing an artificial excellence to its proposal." OBT specifically cites a number of alleged deficiencies in the past performance evaluation. For example, OBT notes that when NEC included with its proposal completed past performance evaluation questionnaires--using the form furnished to offerors as part of the solicitation--for each of its references, VA initially failed to verify the ratings in the questionnaires with the references in question. OBT also maintains that VA improperly considered NEC's performance of 12 contracts in Puerto Rico, including 9 contracts for individual branches of a Puerto Rican bank, since the RFP limited the contracts to be considered to those "within the continental United States," and emphasized past performance on contracts that were comparable in size and complexity to the contemplated contract here. Finally, OBT also maintains that VA's approach of rounding off rating numbers when averaging the performance ratings improperly increased NEC's overall score relative to OBT's.

VA's response to OBT's protest has rendered these arguments academic. VA has now verified all but one of NEC's references. The references have not only confirmed the past performance ratings in the questionnaires but, in several instances, have indicated that they would now give NEC a higher rating. VA also has recalculated the past performance scores, omitting NEC's Puerto Rican contracts, not rounding off the averages, and including a past performance evaluation detailing OBT's poor performance installing a replacement telephone system at the VA Medical Center, Coatesville, Pennsylvania (a contract not listed in OBT's proposal and not originally considered by VA). As recalculated, NEC's past performance score (3.5184524) now slightly exceeds OBT's (3.5086906). VA considers the recalculated past performance ratings to be equal, and OBT has not

established otherwise. We thus have no basis to question VA's position in this regard.<sup>2</sup>

OBT argues that it was improper for the agency to seek information regarding its performance of the Coatesville contract; according to the protester, it is improper for an agency to consider new information when reevaluating proposals in response to a protest. OBT further asserts VA's consideration of new, negative information with respect to OBT's past performance (and VA's failure to take into account alleged deficiencies in NEC's price proposal, as discussed below), is evidence of bias against OBT.

This argument is without merit. The solicitation clearly contemplated that VA would consider an offeror's performance on other contracts, whether or not the offeror complied with the solicitation requirement to list the contracts in its proposal. The fact that the agency implemented its stated intention and considered the Coatesville contract only after OBT had filed its protest does not render its action improper. Further, there is no credible evidence in the record showing bias against OBT. In fact, we note that award initially was made to OBT; OBT does not explain, nor is it otherwise evident from the record, how this is consistent with alleged bias against OBT. Thus, we cannot conclude that the VA was biased against OBT. See Areawide Servs. Ltd., B-265650.2, Dec. 28, 1995, 95-2 CPD ¶ 287 (protester must produce credible evidence showing bias, not mere inference or supposition, and must demonstrate that the agency bias translated into action which unfairly affected the protester's competitive position on the procurement in question).

#### NEC'S PRICE PROPOSAL

OBT argues that discrepancies and deficiencies in NEC's cost/price proposal preclude any award to NEC on the basis of its initial proposal; according to the protester, these matters can only be resolved through discussions with NEC, which would necessitate discussions with all offerors.

This argument is without merit. OBT asserts that VA is required to conduct discussions with NEC because NEC's summation of its line item prices differed from the agency's calculation of those prices. (Again, while NEC's summation of its line item prices totaled \$4,898,548, VA, applying the solicitation provisions discussed below, evaluated its overall price as \$4,726,114; while OBT's summation totaled \$4,746,282, VA evaluated its overall price as \$4,822,231.) However, apparently anticipating that discrepancies were likely given that offerors were to complete

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<sup>2</sup>According to OBT, "[i]f Coatesville is considered, [NEC] and [OBT] have, at worst, an equal past performance rating."

56 pages of detailed pricing schedules with hundreds of prices, VA specifically advised offerors in the solicitation that it would conduct an independent recalculation of prices based on proposed unit prices.<sup>3</sup> In this regard, the solicitation stated that:

“[t]he Government employs recomputational methodologies which act upon the raw unit price data to (a) independently generate summary price tables; and (b) perform other pricing analyses.”

It further advised that:

“[t]he unit prices on the price tables shall be the governing factor in determining how to resolve any apparent conflicts between unit prices and offeror computations based upon unit prices.”

We think it was clear from these provisions that only the unit prices, and not the offerors' summations of their prices, would control for evaluation purposes. As there is no assertion or evidence that the discrepancy between NEC's unit pricing and its summation was the result of a mistake as to the unit prices, and the protester does not challenge the evaluation of NEC's total price as low based on the unit prices, the discrepancy in NEC's price summation does not preclude award on the basis of NEC's initial proposal. See GSX Gov't Servs., Inc., B-233101, Feb. 9, 1989, 89-1 CPD ¶ 137, recon. denied, GSX Gov't Servs., Inc.--Recon., B-233101.2, Mar. 27, 1989, 89-1 CPD ¶ 308; Holley Elec. Constr. Co., Inc., B-209384, Jan. 31, 1983, 83-1 CPD ¶ 103.

OBT further argues that NEC failed to comply with the solicitation requirement to propose basic monthly maintenance (BMM) charges for each of the various components of the new telephone system. Contrary to OBT's assertion, however, NEC in fact proposed BMM charges. Specifically, NEC, which foresees no BMM costs associated with the components in question, entered a price of [DELETED] for nearly all of the components. [DELETED]

OBT asserts that NEC's proposal was rendered unacceptable by its pricing of the item for the removal of old telephone cabling, for which offerors were to quote a price per foot. Specifically, NEC entered the amount of [DELETED] for the removal of old cabling which, in view of the prices previously paid for cable removal, VA determined clearly was a lump-sum price. (VA has verified with NEC that it intended a lump-sum price.) Since the solicitation did not provide for

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<sup>3</sup>In fact, VA's summation of prices differed from that of each of the offerors.

inclusion of the cable removal pricing in the evaluation (it stated a quantity of 0), VA properly treated this deviation as a minor informality which does not preclude award to NEC on the basis of its initial proposal. Federal Acquisition Regulation § 15.607(a) (FAC 90-31).<sup>4</sup>

The protest is denied.

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of the United States

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<sup>4</sup>VA reports that it "cannot make a firm determination of how much cable will need to be removed, or for that matter, if any cabling will need to be removed."